

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
KATHERINE DELPECHE, :
:

Plaintiff, :
:

-against- :
:

TASTES ON THE FLY NEW YORK, LLC, et al. :
:

Defendants. :
:
: X

**ORDER GRANTING MOTION
TO DISMISS**

21 Civ. 893 (AKH)

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ALVIN K. HELLERSTEIN, U.S.D.J.:

Plaintiff Katherine Delpeche instituted this action on February 21, 2021, asserting claims for discrimination, harassment, and retaliation under federal, state, and New York City law. However, on February 9, 2022 Plaintiff's counsel informed the Court that Plaintiff had passed away. *See* Morrison Decl., ECF No. 22, at ¶ 4; Suggestion of Death of Plaintiff, ECF No. 25. Because no motion to substitute Plaintiff has been made to date, Defendant moved to dismiss the Complaint on August 15, 2022. No opposition was filed.

Federal Rule of Civil Procedure 25(a)(1) provides that "If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." F.R.C.P. 25(a)(1). A Suggestion of Death was filed on the docket on April 20, 2022, along with a certificate of service verifying service was made on Plaintiff's counsel and at Plaintiff's last known address. Additionally, Plaintiff's counsel and Defense counsel affirm that reasonable efforts to contact the family of Plaintiff have failed. *See* Morrison Decl., ECF No. 22, at ¶ 12; Santoro Aff., ECF No. 29, at ¶¶ 7–9.

More than 90 days have elapsed since the Suggestion of Death was filed and served, and no motion to substitute has been filed. Accordingly, Rule 25(a) is controlling and the case must be dismissed. *See Unicorn Tales, Inc. v. Bannerjee*, 138 F.3d 467, 470–71 (2d Cir. 1998); *Lebron v. Ramos*, 2022 WL 2905171, at *8 n.3 (S.D.N.Y. July 21, 2022) (noting that dismissal is “mandatory pursuant to Rule 25(a)(1)” when no motion for substitution is filed within 90 days of the filing of a Statement of Death).

The case is hereby dismissed. The Clerk shall terminate all open motions and mark the case closed.

SO ORDERED.

Dated: August 31, 2022
New York, New York

/s/ Alvin K. Hellerstein

ALVIN K. HELLERSTEIN
United States District Judge